

FEB 12 1992
PENNZOIL PRODUCTS COMPANY

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(Red)

February 12, 1992

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CERTIFIED MAIL

SPCC Coordinator (3HW32)
Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

FAX RECEIVED
BY D. WRIGHT

Regional Hearing Clerk (3RC00)
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Philadelphia, PA 19107

Ms. Judith R. Hykel
Assistant Regional Counsel (3RC23)
Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Re: Notice of Violation and Proposed Civil Penalty SPCC
Docket No. WV-89-009, Dated January 31, 1992

Mitigation Request

Dear Sir or Madam:

This letter is written for the purpose of seeking mitigation of the Environmental Protection Agency's proposed penalty in the above-referenced matter. In this regard, please be assured that Pennzoil Products Company Etowah Terminal remains committed to complying with the requirements of 40 C.F.R. Part 112. This commitment has been demonstrated by actions already taken by the Company to resolve issues concerning review of the SPCC plan and integrity of the secondary containment dike walls. Notably, these actions were accomplished prior to receipt of the Notice of Violation. In fact, actions with respect to the maintenance and enhancement of the dike walls were taken on the Company's own initiative rather than at the direction of the Agency. (See Exhibit A - Inspection Report dated August 1, 1989.) The details of these efforts are set forth below.

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At the time of the inspection, it was noted that the SPCC plan had not been reviewed every three years as required. Within one week of the inspection, management conducted this review and, thereafter, in 1991, a year before the next required review date, the plan was reviewed, updated and certified by a professional engineer. Thus, the Company has taken all steps necessary to achieve compliance with 40 C.F.R. Section 112.5.

Concerning the integrity of the secondary containment dike walls, the Notice alleges that walls were cracked and breached to allow above ground pipes to pass through the wall. As alluded to above, the inspection report did not mention these concerns. However, in connection with its own subsequent review, the facility sealed the wall around the pipes (Exhibit B) and repaired cracks in the walls (Exhibit C) so as to render them sufficiently impervious to contain spilled oil. It should be noted that only one wall, not every wall, as is reflected in the inspector's notes, was breached to allow pipes to pass through it. As stated, these dike openings around the pipes have been sealed.

As further evidence of Pennzoil's good faith, the following information is provided concerning additional maintenance performed on the secondary containment system not related to the specific allegations raised in the Notice. Given the proximity of the facility to the Elk River, it was decided to further enhance the existing containment system by constructing a second wall on the inside of the existing dike wall on the river side of the facility. This project is near completion. The cost of this project was over \$100,000. Thus, the facility has not only resolved all issues raised in the Notice but has taken additional precautionary measures as well to strengthen the existing system.

At the outset, I stated that the Company was committed to complying with the Agency's regulations covering SPCC plans. Based on the information provided, I believe we have demonstrated this commitment. A second factor which supports mitigation in this matter relates to the timing of the Agency's communication of the alleged violations concerning the containment walls. Although the inspector noted these conditions in an internal agency document, presumably shortly after the date of the inspection, this information was not shared with the Company until we received the Notice approximately 2 1/2 years later. In the interest of protecting the

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environment, this practice should be modified so that facilities may be made aware of the government's concerns at the time of the inspection, or as soon thereafter as possible, to help insure that measures to rectify the situation can be implemented expediently. The fact that the Company implemented corrective measures on its own in the absence of a full description of the inspector's concerns should be given substantial weight in considering the issue of mitigation.

In view of all the above circumstances, we believe it would be reasonable and appropriate to reduce the proposed penalty. In the interest of resolving this matter expeditiously and informally, the Company offers payment in the amount of \$3,000 which would equate to a mitigation of the proposed penalty by the amount of \$11,400.

Should you wish to discuss this matter further, please contact Elizabeth M. Chipinski at (713) 546-8832.

Sincerely,



John A. Wagner
Director
Finished Product Distribution

JAW:PP

Attachments